



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

26 October 2021 \*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure –  
Judicial cooperation in criminal matters – European arrest warrant –  
Framework Decision 2002/584/JHA – Article 27(3)(g) and (4) – Request for consent to  
prosecution for offences other than those on which the surrender was based – Article 28(3) –  
Request for consent to subsequent surrender of the person concerned to another Member State –  
Article 47 of the Charter of Fundamental Rights of the European Union – Right to effective  
judicial protection – Right of the person concerned to be heard by the executing judicial  
authority – Arrangements)

In Joined Cases C-428/21 PPU and C-429/21 PPU,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decisions of 14 July 2021, received at the Court on 14 July 2021, in the proceedings relating to the execution of the European arrest warrants issued against

**HM** (C-428/21 PPU),

**TZ** (C-429/21 PPU)

intervener:

**Openbaar Ministerie,**

THE COURT (First Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the First Chamber,  
S. Rodin, N. Jääskinen (Rapporteur), J.-C. Bonichot and M. Safjan, Judges,

Advocate General: A. Rantos

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 September 2021,

after considering the observations submitted on behalf of:

– the Openbaar Ministerie, by C. McGivern and K. van der Schaft,

\* Language of the case: Dutch.

- the Netherlands Government, by M.K. Bulterman, C.S. Schillemans and J. Langer, acting as Agents,
- Ireland, by M. Lane, acting as Agent, assisted by G. Mullan, Barrister-at-Law,
- the French Government, by A. Daniel, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, acting as Agent,
- the European Commission, by S. Grünheid, M. Wasmeier and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2021

gives the following

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 27(3)(g) and (4) and Article 28(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The requests have been made in the context of the execution, in the Netherlands, of two European arrest warrants issued, respectively, in Case C-428/21 PPU, by the Hungarian judicial authorities against HM, a third-country national, and, in Case C-429/21 PPU, by the Belgian judicial authorities against TZ, a Netherlands national, following requests for consent submitted by each of those judicial authorities, the first under Article 27(4) of Framework Decision 2002/584 and the second under Article 28(3) thereof.

### **Legal framework**

#### ***European Union law***

- 3 Recitals 5, 6 and 12 of Framework Decision 2002/584 are worded as follows:
  - '(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected in [the Charter], in particular Chapter VI thereof. ...’

4 Article 1 of that framework decision, entitled ‘Definition of the European arrest warrant and obligation to execute it’, provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].’

5 Articles 3, 4 and 4a of Framework Decision 2002/584 list the grounds for mandatory (Article 3) and optional (Articles 4 and 4a) non-execution of the European arrest warrant. Article 5 of the framework decision sets out guarantees to be given by the issuing Member State in particular cases. Article 8 of Framework Decision 2002/584 concerns the content and form of the European arrest warrant.

6 According to Article 11 of that framework decision, entitled ‘Rights of a requested person’:

‘1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.’

7 Article 13 of Framework Decision 2002/584, entitled ‘Consent to surrender’, provides:

‘1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the “speciality rule”, referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

...'

- 8 Article 14 of that framework decision, entitled 'Hearing of the requested person', provides:

'Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.'

- 9 Article 15 of Framework Decision 2002/584 is worded as follows:

'1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

- 10 Article 19 of that framework decision, entitled 'Hearing the person pending the decision', provides in paragraph 2 thereof:

'The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.'

- 11 According to Article 27 of Framework Decision 2002/584, entitled 'Possible prosecution for other offences':

'1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

...

- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

...'

12 Article 28 of that framework decision, entitled 'Surrender or subsequent extradition', provides:

'1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

...

- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
- (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

...'

### ***Netherlands law***

- 13 Framework Decision 2002/584 was transposed into Netherlands law by the Wet tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Overleveringswet) (Law implementing the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between the Member States of the European Union (Law on surrender)) of 29 April 2004 (Stb. 2004, No 195), as last amended by the Law of 17 March 2021 (Stb. 2021, No 155).

### **The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice**

#### ***Case C-428/21 PPU***

- 14 On 25 May 2020, the referring court, the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), authorised the surrender of HM, a third-country national, to Hungary for the purpose of criminal prosecution in that Member State for the offence of 'laundering of the proceeds of crime'. On 25 June 2020, HM was in fact surrendered to Hungary, where he has since been in custody.
- 15 On 13 April 2021, a Hungarian judicial authority addressed to the referring court a request, under Article 27(3)(g) and (4) of Framework Decision 2002/584, for its consent to the prosecution of HM in Hungary for offences other than those on which his surrender was based, in particular for other offences constituting laundering of the proceeds of crime allegedly committed by him prior to his surrender.
- 16 According to the referring court, which is the executing judicial authority in this case, the request for consent contains the information provided for in Article 8(1) of Framework Decision 2002/584, as well as a record of the hearing of HM before a Hungarian judicial authority. At that hearing, HM, who was assisted by a lawyer, stated that he did not wish to renounce his entitlement to the speciality rule as referred to in Article 27(3)(f) of that framework decision.

- 17 While noting that Framework Decision 2002/584 does not contain any rules on the procedure to be followed by the executing judicial authority when it receives a request for consent referred to in Article 27 of that framework decision, the referring court points out that the right to be heard is one of the rights of defence inherent in the right to effective judicial protection.
- 18 However, since HM is currently in custody in Hungary, he was not summoned to express his views on the request for consent addressed to the referring court and, when the referring court examined the request, was neither present nor represented, either by the lawyer who had assisted him in the earlier proceedings relating to the execution of the European arrest warrant or by another lawyer.
- 19 Accordingly, the referring court asks in which Member State and in what manner the surrendered person must be able to exercise his or her right to be heard when a judicial authority of the issuing Member State seises the executing judicial authority of a request for consent under Article 27(3)(g) and (4) of Framework Decision 2002/584.
- 20 Against that background, the rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
  - ‘(1) Must Article 27(3)(g) and (4) of [Framework Decision 2002/584], read in the light of the right to effective judicial protection, be interpreted as meaning that:
    - a surrendered person must be able to exercise his or her right to be heard in relation to a request for an extension of the offences in the issuing Member State when a judicial authority of that Member State grants him or her a hearing relating to the possible renunciation of the entitlement to the speciality rule as referred to in Article 27(3)(f) of the framework decision, or
    - must that person be able to exercise his or her right to be heard in the Member State which previously surrendered him or her to the executing judicial authority in the proceedings relating to the request for consent to extend the offences?
  - (2) If a surrendered person must be able to exercise his or her right to be heard in relation to the decision on a request for consent to extend the offences, as referred to in Article 27(4) of [Framework Decision 2002/584], in the Member State which previously surrendered him or her, in what way must that Member State enable him or her to do so?’

### ***Case C-429/21 PPU***

- 21 On 26 January 2021, the referring court authorised the surrender of TZ, a Netherlands national, to the Kingdom of Belgium for the purpose of criminal prosecution in Belgium for the offence of ‘organised or armed robbery’. TZ was in fact surrendered to that Member State, where he has since been in custody.
- 22 On 3 May 2021, a Belgian judicial authority addressed to the referring court a request for consent to TZ’s subsequent surrender to the Federal Republic of Germany, under Article 28(3) of Framework Decision 2002/584, with a view to prosecution for other offences, namely organised

or armed robbery allegedly committed during 2020. The request for consent contains the information referred to in Article 8(1) of that framework decision and the translation referred to in Article 8(2) thereof.

- 23 The referring court, as the executing judicial authority in the present case, notes that TZ is currently in custody in Belgium. He was not summoned and was neither present nor represented when the referring court examined the request from the Belgian judicial authority.
- 24 Accordingly, the referring court asks, in essence, the same question as that referred to in paragraph 19 of this judgment, concerning the right of the surrendered person to be heard in the context of a request for consent based on Article 28(3) of Framework Decision 2002/584.
- 25 Against that background, the rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 28(3) of [Framework Decision 2002/584], read in the light of the right to effective judicial protection, be interpreted as meaning:

- that a person who has been surrendered to the issuing Member State and in respect of whom a third Member State has subsequently issued [a European arrest warrant] for offences committed prior to that surrender, must be able to exercise his or her right to be heard in relation to the request for consent for subsequent surrender, as referred to in Article 28(3) of Framework Decision 2002/584/JHA, in the issuing Member State before a judicial authority of that Member State during the proceedings on the execution of the EAW issued by the third Member State; or
- that that person must be able to exercise his right to be heard in the Member State which previously surrendered him to the executing judicial authority during the proceedings on the giving of consent for subsequent surrender?

(2) If a surrendered person must be able to exercise his or her right to be heard in relation to the decision on a request for consent for subsequent surrender, as referred to in Article 28(3) of [Framework Decision 2002/584], in the Member State which previously surrendered him or her, in what way must that Member State enable him or her to do so?’

- 26 Cases C-428/21 PPU and C-429/21 PPU were joined by decision of the President of the Court of 30 July 2021.

### **The urgent preliminary ruling procedure**

- 27 The referring court requested that these references for a preliminary ruling be dealt with under the urgent procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.
- 28 In support of its request, the referring court points out that the questions referred for a preliminary ruling concern a matter covered by Title V of Part Three of the FEU Treaty and that HM and TZ are currently deprived of their liberty.



- 29 As regards, on the one hand, HM's situation, the referring court observes that the Court's answers to the questions referred for a preliminary ruling will have a direct and decisive influence on the duration of his detention in Hungary, in so far as, inter alia, in the event of refusal of the request for consent to extend the offences under Article 27(3)(g) and (4) of Framework Decision 2002/584, the competent authority of the issuing Member State would not be permitted to place him in pre-trial detention for the offences to which that request relates.
- 30 As regards, on the other hand, TZ's situation, the referring court emphasises that that person is deprived of his liberty pending that court's decision on the request for consent to his subsequent surrender to the German judicial authority with a view to the execution of a European arrest warrant issued by that authority.
- 31 In that regard, it must be observed, in the first place, that these references for a preliminary ruling concern the interpretation of Framework Decision 2002/584, which fall within the areas covered by Title V of Part Three of the FEU Treaty, which relate to the area of freedom, security and justice. They may therefore be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure.
- 32 As regards, in the second place, the criterion relating to urgency, according to the settled case-law of the Court, it is necessary to take into consideration the fact that the person involved in the main proceedings is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (see, inter alia, judgment of 28 November 2019, *Spetsializirana prokuratura*, C-653/19 PPU, EU:C:2019:1024, paragraph 22 and the case-law cited).
- 33 In the present case, first, HM and TZ are currently deprived of their liberty. As is apparent from paragraphs 18 and 23 of this judgment, HM and TZ are being detained in Hungary and Belgium respectively, having been surrendered to those Member States on the basis of European arrest warrants issued by those Member States. Secondly, since the questions referred by the referring court relate to whether or not it is necessary to hear the person concerned in relation to the existence of grounds capable of justifying a refusal by the judicial authority of the executing Member State to consent to an extension of the offences on which the surrender was initially based or to the subsequent surrender of that person to another Member State, the Court's decision could have an immediate effect on the continuation of the pre-trial detention of HM and TZ.
- 34 In those circumstances, on 29 July 2021, the First Chamber of the Court of Justice decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request for the present references for a preliminary ruling to be dealt with under the urgent preliminary ruling procedure.

### **Consideration of the questions referred**

- 35 By its two questions in each of the joined cases, which should be examined together, the referring court asks, in essence, whether Article 27(3)(g) and (4) and Article 28(3) of Framework Decision 2002/584, read in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter, must be interpreted as meaning that a person who has been surrendered to the issuing judicial authority pursuant to a European arrest warrant is entitled to be heard by the

executing judicial authority when the latter receives from the issuing judicial authority a request for consent under those provisions of Framework Decision 2002/584 and, in the event of an affirmative answer, how the right of the person concerned to be heard is to be exercised in practice.

- 36 In order to answer that question, it is necessary to recall, as a preliminary point, the legal bases of the system established by Framework Decision 2002/584, as set out in that framework decision and in the case-law of the Court.
- 37 First, it is important to point out that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 35 and the case-law cited).
- 38 In that context, Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 37 and the case-law cited).
- 39 As is apparent from Article 1(1) and (2) of Framework Decision 2002/584, read in the light of recital 5 thereof, the purpose of that framework decision is to replace the multilateral system of extradition based on the European Convention on Extradition, signed in Paris on 13 December 1957, with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (see, in particular, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 37 and the case-law cited).
- 40 That principle, which, according to recital 6 of Framework Decision 2002/584, constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is put into practice in Article 1(2) of that framework decision, which lays down the rule that Member States are to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 38 and the case-law cited).
- 41 It follows that executing judicial authorities may, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception, which must be interpreted strictly (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 39 and the case-law cited).

- 42 Next, as regards, in particular, Articles 27 and 28 of Framework Decision 2002/584, which are the subject matter of the requests for a preliminary ruling, the Court has already held that, although those articles confer on the Member States certain precise powers in relation to the execution of a European arrest warrant, those provisions, where they lay down rules derogating from the principle of mutual recognition stated in Article 1(2) of that framework decision, cannot be interpreted in a way which would frustrate the objective pursued by that framework decision, which is to facilitate and accelerate surrenders between the judicial authorities of the Member States in the light of the mutual confidence which must exist between them (judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 35 and the case-law cited).
- 43 Lastly, the Court has pointed out that Framework Decision 2002/584, read in the light of the provisions of the Charter, cannot be interpreted in such a way as to call into question the effectiveness of the system of judicial cooperation between the Member States of which the European arrest warrant, as provided for by the EU legislature, is one of the key elements (see, to that effect, judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 58 and the case-law cited).
- 44 The Court has thus held that, in order in particular to ensure that the operation of the European arrest warrant is not brought to a standstill, the duty of sincere cooperation, laid down in the first subparagraph of Article 4(3) TEU, must inform the dialogue between the executing and issuing judicial authorities. Therefore, in accordance with the principle of sincere cooperation, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (see, to that effect, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraphs 104 and 109 and the case-law cited).
- 45 It is in the light of those elements that it is necessary to determine, in the first place, whether a person who has been surrendered to the issuing judicial authority pursuant to a European arrest warrant has, as the referring court considers, the right to be heard when, on the basis of, respectively, Article 27(3)(g) and (4) or Article 28(3) of Framework Decision 2002/584, the issuing judicial authority sends a request for consent to the executing judicial authority with a view to either prosecution for offences other than those on which his or her surrender was based or the subsequent surrender of that person to another Member State.
- 46 In that regard, it should be noted that Article 14 of Framework Decision 2002/584 provides that any arrested person who does not consent to his or her surrender is to be entitled to be heard, and Article 19 of that framework decision lays down specific rules on such a hearing. By contrast, the framework decision contains no specific provision concerning the right to be heard of a person surrendered in the context of one or other of the requests for consent referred to in the preceding paragraph.
- 47 It is clear from Article 1(3) of Framework Decision 2002/584, read in conjunction with recital 12 thereof, that that framework decision respects fundamental rights and observes the principles recognised by Article 6 TEU and reflected in the Charter, in particular the provisions of Chapter VI thereof. Article 47 of the Charter, which is included in that chapter, sets out the right to effective judicial protection.

- 48 Since the right to be heard is one of the rights of the defence, inherent in the right to effective judicial protection (see, to that effect, judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraphs 203 and 205 and the case-law cited), it cannot in any way be inferred from the fact that Framework Decision 2002/584 does not expressly recognise the right of the person concerned to be heard in the context of a request for consent under Article 27(3)(g) and (4) or Article 28(3) of that framework decision that that person is, in such circumstances, deprived of that fundamental right.
- 49 As the Court has already pointed out, the decision to grant the consent provided for in Article 27(4) of Framework Decision 2002/584 is distinct from that relating to the execution of a European arrest warrant and leads, for the person concerned, to effects distinct from those of the latter decision (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 60). The same must apply to the effects of the consent referred to in Article 28(3) of that framework decision, relating to the subsequent surrender of the person concerned to another Member State.
- 50 It must first be noted in this respect that, under Article 27(4) and Article 28(3), the consent of the executing judicial authority is given when the offence to which that consent relates is itself subject to surrender in accordance with the provisions of that framework decision. In addition, consent is refused on the same grounds of mandatory or optional non-execution as those provided for in respect of the European arrest warrant in Articles 3 and 4 of that framework decision (see, to that effect, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 61).
- 51 Secondly, although, when the executing judicial authority is requested to give its consent under Article 27(4) or Article 28(3) of Framework Decision 2002/584, the person concerned has already been surrendered to the issuing judicial authority pursuant to a European arrest warrant, the fact remains that the decision on consent, like that on the execution of that European arrest warrant, is liable to prejudice the liberty of that person (see, to that effect, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 62). A decision on consent will, inter alia, mean that that the person concerned may be prosecuted, convicted or deprived of his or her liberty for having committed an offence other than that covered by the European arrest warrant, in the context of the execution of which that person was able to assert his or her fundamental rights, including the right to be heard.
- 52 Thus, since the proposed measure against that person would adversely affect him or her, it must be held that the person concerned must have the right to be heard when a request for consent is made by the judicial authorities of the issuing Member State under Article 27(4) or Article 28(3) of Framework Decision 2002/584.
- 53 It is therefore necessary to determine, in the second place, the authority before which the person concerned may assert his or her right to be heard when such a request for consent is made.
- 54 Even though, in accordance with Article 27(3)(f) and Article 28(2)(b) of Framework Decision 2002/584, the issuing judicial authority is required to hear the person concerned in order to obtain that person's possible renunciation of entitlement to the speciality rule provided for in Article 27(2) of that framework decision or that person's consent to subsequent surrender to another Member State under Article 28(2) thereof, it is nevertheless for the executing judicial authority to give its consent to such an extension of the prosecution to other offences or to such subsequent surrender, pursuant to Article 27(4) and Article 28(3)(d) of that framework decision.

- 55 The executing judicial authority must therefore assess, in the light inter alia of the grounds for mandatory or optional non-execution provided for in Articles 3 and 4 of Framework Decision 2002/584, whether the possible extension of the prosecution to other offences or subsequent surrender to another Member State may be authorised.
- 56 It follows that the surrendered person must be heard by the executing judicial authority when a request for consent is made by the judicial authorities of the issuing Member State under Article 27(4) or Article 28(3) of Framework Decision 2002/584.
- 57 Consequently, it is necessary to determine, in the third and last place, the arrangements for the exercise of that right, as they result from EU law.
- 58 In that regard, as was pointed out at the hearing before the Court, it is necessary to ensure that those arrangements are appropriate for securing both attainment of the objective pursued by Framework Decision 2002/584, which is in particular to facilitate and accelerate surrenders between the judicial authorities of the Member States, as is clear from paragraph 42 of this judgment, and respect for the fundamental rights of the surrendered person.
- 59 However, Framework Decision 2002/584 does not contain any provision specifically relating to such arrangements.
- 60 Thus, in implementing Framework Decision 2002/584, the Member States retain, in accordance with their procedural autonomy, the option of adopting in that connection rules which may differ from one Member State to another. However, they must ensure that those rules do not frustrate the requirements arising from that framework decision, in particular as regards the judicial protection, guaranteed by Article 47 of the Charter, which underpins it (see, by analogy, judgment of 10 March 2021, *PI*, C-648/20 PPU, EU:C:2021:187, paragraph 58).
- 61 Moreover, as the Advocate General pointed out, in essence, in point 53 of his Opinion, in the absence of specific rules laid down by EU law, the arrangements for exercising the right of the person concerned to be heard in the context of a request for consent made by the judicial authorities of the issuing Member State may be determined by mutual agreement between the issuing and executing judicial authorities, in compliance with the principle of procedural autonomy.
- 62 As is apparent from the case-law of the Court, the right to be heard, which is inherent in the right to effective judicial protection, guarantees every person the opportunity to make known his or her views effectively during the proceedings in question (see, to that effect, judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 205 and the case-law cited).
- 63 When a request for consent is made by the judicial authorities of the issuing Member State under Article 27(4) or Article 28(3) of Framework Decision 2002/584, the opportunity for the person concerned to make known his or her views effectively, set out in the second paragraph of Article 47 of the Charter, although not entailing the right for that person to appear in person before the executing judicial authority when it proposes to consent to the request of the issuing Member State, requires however that that person has had an actual opportunity to submit any observations and objections before the executing judicial authority regarding the request for consent.

- 64 For the purpose of interpreting the second paragraph of Article 47 of the Charter, it is necessary to take into account, under Article 52(3) thereof, the case-law of the European Court of Human Rights on Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.
- 65 It follows from that case-law that Article 6(1) of that convention does not apply to extradition procedures, which include, inter alia, the procedure for the execution of the European arrest warrant, in so far as those procedures do not involve the determination of the applicant's civil rights and obligations or of a criminal charge (see, to that effect, ECtHR, 7 October 2008, *Monedero Angora v. Spain*, CE:ECHR:2008:1007DEC004113805, § 2, and of 4 September 2014, *Trabelsi v. Belgium*, CE:ECHR:2014:0904JUD000014010, § 160 and the case-law cited).
- 66 In that context, it is also important to recall that the decision of the executing judicial authority to consent to the request made by the issuing judicial authority under Article 27(4) or Article 28(3) of Framework Decision 2002/584 must be taken no later than 30 days after receipt of that request. Accordingly, it is necessary to ensure that the person concerned is heard properly and effectively, as is apparent from paragraph 62 of this judgment, without, however, calling into question the underlying logic of Framework Decision 2002/584 or its objectives of accelerating surrender procedures (see, by analogy, judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 73).
- 67 In those circumstances, and in the light of the requirement of rapid action which underlies Framework Decision 2002/584, the right to be heard by the executing judicial authority may in practice be implemented in the issuing Member State, in which the surrendered person is present, without the direct participation of the executing judicial authority.
- 68 Accordingly, there is nothing to preclude the approach proposed by the referring court, which is for the person concerned to express his or her position before the issuing judicial authority as regards the possible extension of the prosecution to offences other than those on which his or her surrender was based or as regards his or her subsequent surrender to another Member State, for example when that authority grants him or her a hearing relating to the possible renunciation of entitlement to the speciality rule, in accordance with Article 27(3)(f) of Framework Decision 2002/584, or in the context of proceedings relating to the execution of a European arrest warrant subsequently issued by another Member State for offences committed before his or her surrender to the issuing Member State. If that position is formally recorded and subsequently communicated by the issuing judicial authority to the executing judicial authority, it must be regarded by the executing judicial authority, in principle, as having been obtained by the issuing judicial authorities in accordance with the requirements of the second paragraph of Article 47 of the Charter. As is clear from paragraph 37 of this judgment, in accordance with the principle of mutual trust, Member States must, save in exceptional circumstances, consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.
- 69 In addition, it must be recalled that Articles 27 and 28 of Framework Decision 2002/584 respectively reflect Articles 14 and 15 of the European Convention on Extradition, signed in Paris on 13 December 1957 (judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 57). It is apparent in particular from Article 14 of that convention that a request for consent with a view to prosecution for other offences must be accompanied by a 'legal record of any statement made by the extradited person in respect of the offence concerned'.

- 70 Since it is for the executing judicial authority to ensure respect for the rights of the defence, that authority must examine the request for consent under Article 27(4) or Article 28(3) of Framework Decision 2002/584 on the basis of the information contained in that request and with due regard to the position of the person concerned.
- 71 In the event that the executing judicial authority considers that it does not have sufficient information, in particular as regards the position of the person concerned, to allow it, while fully respecting his or her rights of defence, to take a fully informed decision on the request for consent in question, it must have recourse, by analogy, to the provisions of Article 15(2) of that framework decision, by requesting that the issuing judicial authority provide it, as a matter of urgency, with supplementary information on the position of the person concerned.
- 72 However, it is for the executing judicial authority and the issuing judicial authority to ensure that such a request for supplementary information and compliance with it do not undermine the objective of Framework Decision 2002/584, which is to facilitate and accelerate surrender procedures, and more specifically that the decision on the request for consent can be taken by the executing judicial authority within the time limit of 30 days provided for in Article 27(4) and Article 28(3)(c) of that framework decision.
- 73 In the light of all the foregoing considerations, the answer to the questions referred is that Article 27(3)(g) and (4) and Article 28(3) of Framework Decision 2002/584, read in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter, must be interpreted as meaning that a person who has been surrendered to the issuing judicial authority pursuant to a European arrest warrant is entitled to be heard by the executing judicial authority when the latter receives from the issuing judicial authority a request for consent under those provisions of Framework Decision 2002/584; that hearing may take place in the issuing Member State – in which case the latter’s judicial authorities must ensure that the right to be heard of the person concerned is exercised properly and effectively – and may be held without the direct participation of the executing judicial authority. However, the executing judicial authority must ensure that it has sufficient information, in particular as regards the position of the person concerned, to allow it – while fully respecting his or her rights of defence – to take a fully informed decision on the request for consent made under Article 27(4) or Article 28(3) of Framework Decision 2002/584 and must ask, where appropriate, the issuing judicial authority to provide it, as a matter of urgency, with supplementary information.

## **Costs**

- 74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**Article 27(3)(g) and (4) and Article 28(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a person who has been surrendered to the issuing judicial authority**

**pursuant to a European arrest warrant is entitled to be heard by the executing judicial authority when the latter receives from the issuing judicial authority a request for consent under those provisions of Framework Decision 2002/584; that hearing may take place in the issuing Member State – in which case the latter’s judicial authorities must ensure that the right to be heard of the person concerned is exercised properly and effectively – and may be held without the direct participation of the executing judicial authority. However, the executing judicial authority must ensure that it has sufficient information, in particular as regards the position of the person concerned, to allow it – while fully respecting his or her rights of defence – to take a fully informed decision on the request for consent made under Article 27(4) or Article 28(3) of Framework Decision 2002/584 and must ask, where appropriate, the issuing judicial authority to provide it, as a matter of urgency, with supplementary information.**

[Signatures]